IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5852 of 2001

AND

SPECIAL CIVIL APPLICATION No 5854 of 2001

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHOKKUMAR RAMANLAL PATEL

Versus

PRINCIPAL, UTTAR BUNIYADI KANYA VIDYALAY & ORS.

Appearance:

1. Special Civil Application No. 5852 of 2001

MR RN SHAH for Petitioner No. 1

MR DN PATEL for Respondent No. 1

Respondents Nos.2 and 4 are served

MRS MANISHA SHAH, AGP for Respondent No. 3

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 18/11/2003

COMMON ORAL JUDGEMENT

RULE returnable today.

The learned advocates appearing for the respondents waive service on behalf of the concerned respondent.

These two petitions are preferred by the secondary school teachers at present serving in the respondent No.1 School against the common judgment and order dated 22nd June, 2001 passed by the Gujarat Secondary Education Tribunal in Applications Nos.215/2001 and 216/2001.

It appears that both the petitioners were appointed as teacher in the respondent No.2 School. The petitioners having been rendered surplus in the year 1994 were absorbed in the respondent No.1 School. Since then, the petitioners are serving in the respondent No.1 School. However, in the year 2001 the respondent No.2 School was given recognition afresh. The petitioners were, therefore, recalled to the respondent No.2 School. Feeling aggrieved, the petitioners preferred the above referred Applications before the Tribunal which, by the impugned judgment and order, came to be dismissed. Feeling aggrieved, the petitioners have preferred the present petitions.

It is not disputed that the petitioners have been serving in the respondent No.1 School since the year 1994 continuously till the date. It is also not disputed that neither of the petitioners has desired to or opted for being recalled in the respondent No.2 School. In the circumstances, there is no reason why the petitioners should be recalled in the respondent No.2 School.

The learned AGP Mrs.Shah has contested the petition. However, she has not been able to show any Government policy that on fresh recognition granted to the school the erstwhile surplus teacher should be recalled in such school. In absence of such policy there is no reason to recall the petitioners against their wishes after nearly 10 years.

In above view of the matter, both these petitions are allowed. The impugned judgment and order dated 22nd June, 2001 passed by the Tribunal in Applications Nos.215/2001 and 216/201 is quashed and set aside. The

Applications Nos.215/2001 and 216/2001 are allowed in as much as the order dated 4th April, 2001 directing the petitioners to report for duty in the respondent No.2 School is quashed and set aside.

Rule nisi issued in each of these petitions is made absolute. The parties shall bear their own costs.

The Registry shall maintain copy of this order in both these petitions.

(Ms. R.M.Doshit, J.)

/sakkaf